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Supreme Court, U.S.
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NO._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

SUCCESSION OF HIGH COUNTRY
BROADCASTING COMPANY, INC.
Petitioner,

&

C.R. CRISLER, Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

William P. Walters
P.O. Box 280
Greenwood, AR 72936
(501)996-2122

Attorney of Record

35 pp

QUESTIONS PRESENTED

Intervenor C.R. Crisler owned a business which was taken by the United States without due process. Defendant is a defunct corporate former owner of the business.

No discovery, hearing, or trial has taken place in any forum, despite Communications Act requirements, and the commitment from the District of Columbia Circuit on these same facts.

The Questions are whether Rule 24 was misapplied to deny intervention by the owner of property seized under a civil forfeiture statute and whether an unconstitutional concept of "permanency of counsel" was raised by plaintiff United States of America under 28 U.S.C. §1654 in order to bar due process to the defendant former corporation.

Also questioned are the plaintiff's illegal and unethical motivations and practices in the proceedings below.

1. Was due process and communications law violated and government conduct appropriate when, despite the succession of a defunct corporation having properly answered and raised a meritorious defense through a licensed attorney, default was entered?

2. Was due process and communications law violated when, without discovery, hearing, or trial, an application for intervention and a cross-complaint from the owner of confiscated property was refused in the courts below?

NAMES OF PARTIES

1. Petitioner-Defendant is nominally High Country Broadcasting Corporation, Inc. the name only of former Arizona Corporation incorporated in 1983 by Millard Orick, now deceased, which dissolved prior to initiation of the present litigation.

The former corporation has no assets, no legal capacity to conduct business, to enter into contractual relationships, or any capacity to identify or locate all its successors without court-ordered discovery.

2. Petitioner-Intervenor C.R. Crisler personally purchased the assets (only) of radio station [KKJJ] from High Country Broadcasting Corporation in Fall, 1985. He was awarded the license for the station at the same time by the Federal Communications Commission.

C.R. Crisler is also a successor to defendant defunct corporation, having at one time owned approximately half of the stock of the corporation.

Crisler was at the outset of this litigation a fulltime law student, entitled to participate either pro-se or under Arizona Supreme Court Rules. Subsequently he was admitted to practice before the Arkansas Supreme Court and the Bar of the Ninth Circuit, and is an applicant for admission to the bar of the United States Supreme Court.

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TABLE OF AUTHORITIES

Constitution of the United States of America
Specifically its Fifth and Seventh, and
Eighth Amendments

Statutes

28 U.S.C. §1654

28 U.S.C. Federal Rules of Civil Procedure
Specifically Rules 11, 24, 55, 60

Communications Act of 1934, As Amended
Specifically 47 U.S.C. §503, 504

Federal Rules of Evidence
Specifically Rules 401,402,403,802,803,804

Arizona Corporation Code
Specifically §10-105, 145, 146

Cases

Algeria I., Inc. v. FCC, 905 F.2d 471 (D.C. Cir., 1990).

Barrett v United States, 798 F.2d 565 (2nd Cir. 1986)

Belz Travel Service, Inc. v. International Air Transport Association, 620 F.2d 1360 (9th Cir. 1980).

Chipanno v. Champion International Corporation, 702 F.2d 829 (9th Cir. 1983).

City of Rohnert Park v. Harris, 601 F.2d 1040 (9th Cir. 1979).

Davis v. Carabo, 50 F.R.D. 468 (D.C. S.C. 1970).

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 107 (1987).

Hamilton v. Edell, 67 F.R.D. 118 (D.C. Pa.), 1975.

Harry Berger v. United States, 295 U.S. 78, at 88 (1975).

High Country Broadcasting Corporation, Inc. v. FCC, Case No. 89-1182 (Ct. App. D.C.Cir., June 9, 1989).

Hodges v. Eastern, 106 U.S. 408 (1982).

ILLGWU National Retirement Fund v. Empire State Mills Corp., 696 F.Supp 885 (S.D.N.Y., 1988).

In Re: Men's Sportswear, Inc., 834 F.2d 1134 (2nd Cir. 1987).

Intel Corp. v. Hartford Accident & Indemnity Company, 952 F.2d 1551 (9th Cir. 1991)

Mendoza v. Wright Vineyard Management, 783 F.2d 941 (9th Cir. 1986).

Mitchell v. Eaves, 24 F.R.D. 434 (D.C.Tenn. 1950)

Pleasant Broadcasting v. FCC, 564 F.2d 469, 500-02, (Ct. App. D.C. Cir., 1977).
Reich v. Webb, 336 F.2d 153 (9th Cir. 1964), Cert. den. 85 S.Ct. 890, 380 U.S. 915).

Scripps Howard Radio, Inc. v. FCC, 316 U.S. 4 (D.C. Cir. 1941).

Securities & Exchange Commission v. Vogel, 49 F.R.D. 297 (D.C.N.Y. 1969).

United States v. Shaffer Equipment Co., No. 5:90-1195, Lexis 13711 (S.D. Va. 1992)

Walker Distributing v. Lucky Lager Brewing Co., 232 F.2d 1 (9th Cir. 1963).

Other

Rules and Code of Professional Conduct, Supreme Court of Arizona, Rules E.R. 1.4, 1.7, 1.8, 1.16(5)

Fifty-Fourth Report of the Committee on Government Operations, United States House of Representatives, U.S. G.P.O., March 17, 1988.

NO._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

SUCCESSION OF HIGH COUNTRY BROADCASTING COMPANY, INC.
Petitioner,

C.R. CRISLER, Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI

Petitioner C.R. Crisler prays that a writ of certiorari issue to review denial of his intervention and cross-complaint in the matter at hand in the courts below.

Petitioner C.R. Crisler, as successor to High Country Broadcasting Corporation, Inc., prays that a writ of certiorari issue to review the refusal of the Courts below to accept its answer and cross-complaint, and to review the order of default agaist the former corporation.

OPINIONS BELOW

1. The Opinion of the United States Court of Appeals for the Ninth Circuit is reprinted at A 1 through A 5.

2. The order of the United States District Court for the District of Arizona is reprinted at A 6 through A8. Petitioners were constructively refused admission to a "hearing" allegedly held on November 26, 1990. Petitioners have no knowledge that any such "hearing" actually took place.

3. The related Opinion of the United States Court of Appeals for the District of Columbia Circuit is reprinted at A 9-10.

4. Other related cases: Prior to the initiation of the appealed-from litigation in the District of Arizona. Petitioner Crisler attempted to bring a claims against the United States, first in the Western District of Arkansas and subsequently in the Western District of Tennessee. He further attempted to bring a Complaint for Declaratory Judgement in the Western District of Arkansas. The complaints were actively opposed by the United States Attorney, and were dismissed at the request of the United States on the basis that a due process opportunity to litigate the controversy would ultimately be presented in the District of Arizona. No discovery, hearings or trial resulted from these related complaints. No relevant published opinions resulted.

JURISDICTION

The decision below from the Ninth Circuit United States Court of Appeals was rendered on August 27, 1993. Motions for recall of mandate and rehearing were denied on October 14, 1993. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S. C. §1254.

A relevant decision, attached hereto, was also rendered by the United States Court of Appeals for the District of Columbia Circuit on June 9, 1989. Taken together, the two orders constitute a conflict in circuits.

STATUTES AND REGULATIONS MOST SPECIFICALLY INVOLVED

47 U.S.C. §503, §504
28 U.S.C. §1654
28 U.S.C. Rule 24 Fed. R. Civ. P.

STATEMENT OF THE CASE

I. Introduction

This is a case raising significant issues of fifth seventh, and eighth amendment due process and administrative procedure under a civil forfeiture statute. It also poses interesting questions about intervention, and asks whether a District Court may deprive a potential litigant of a day in court by requiring the litigant to engage in illegal, unethical, and impossible acts.

The succession of a defunct corporation appeals from a default judgement and denial of its cross-complaint. The owner of property seized under a civil forfeiture statute appeals from denial of his intervention and cross-complaint.

II. FACTUAL BACKGROUND

In 1985, Petitioner in Intervention, C.R. Crisler, purchased the assets (only) of a radio station from High Country Broadcasting, Inc. He was a citizen of Arkansas. High Country was an Arizona corporation, owned by Millard Orick, of which Crisler had acquired as much as half of the stock before it sold its assets and dissolved. From 1985 forward the shell corporation was inactive. It dissolved in 1989 and was sued in 1990.

Possession of corporate records remained with Orick, who died of a stroke in 1988 after being notified of a forfeiture action being initiated by the Federal Communications Commission (FCC). At the time was sued by the United States the former corporation was legally powerless.

In 1986, Crisler had proposed to resell his personally-owned radio station. At that point a competitor and the FCC intervened. A constructive taking occurred which created impossible operating conditions, forcing the radio station out of business in 1987.

By 1988 "administrative process" at the FCC concluded with a letter report and a notice of an additional proposed liability. Because the FCC had lost the station's files at its M Street headquarters in Washington, the report was apparently directed at High Country, and based upon unverified information from the competitor. Petitioners have consistently objected to the letter being introduced in a judicial forum, showing it to be untrustworthy and not in complicity with the Federal Rules of Evidence.

Unknown at the time to both High Country and Crisler, the FCC itself was being investigated by the United States Congress for "loosy goosy operations" and general mismanagement Fifty-Fourth Report of the Committee on Government Operations, United States House of Representatives, U.S. Government Printing Office, March 17, 1988. FCC errors are thus responsible for the harm which befell the Petitioners, and for the necessity of the following litigation.

II. HISTORY OF LITIGATION

While High Country still existed, it had sought review of the FCC's actions and inactions in the District of Columbia Circuit. That Circuit promised a trial de-novo to deal with "all of the issues" in a district court High Country Broadcasting Corporation v. FCC, Case No. 89-1182 (Ct. App. D.C.Cir., June 9, 1989).

There was no lack of diligence by High Country or Crisler in attempting to obtain a speedy day in a district court. Rather, due to the four years in government delay, circumstances changed to the point that High Country was no longer organized in the manner that the government now claims it must have been in order to defend itself.

The civil forfeiture suit finally developed in the District of Arizona when the United States Attorney filed suit in 1990. It is significant to emphasize that not at any previous point in time had occurred any discovery, hearing, or trial. No evidence has ever been presented for examination.

High Country's succession filed an answer in order to clear its name, as did Crisler. Cross-complaints were filed in order to recover damages for the illegal taking by the United States. Initially, Crisler's intervention was permitted.

The Ninth Circuit opinion from which this Petition arises [9194 at line 3], wrongly agreed, without discovery, hearing or trial, that the interests of C.R. Crisler and the former corporation were identical. On this basis, Crisler's intervention was reversed.

Petitioners are unaware of any evidence upon which the assumption that the interests obtained in an asset purchase are the same as those of a former corporation may be founded. An appeal was founded on that clear and prejudicial error of fact. Even if intervention were not fact-based, it would nevertheless be independently proper under Communications Law.

As for the defendant High Country, the Courts below, at the behest of the United States Attorney, composed a very creative [and improperly motivated] scenario:

The defunct former corporation was found to be subject to 28 U.S.C. §1654, requiring the services of a licensed attorney for filing of its pleadings. The Courts below then retroactively disqualified both a fulltime law student, and licensed fulltime Arizona attorney Alicia Tocco. The basis of the retroactive disqualification was lack of "permanency." Upon retroactive disqualification, pleadings were stricken, and default ordered.

PETITIONER POSITION

Petitioners point out that they were first treated disparately and illegally under the Administrative Procedure Act, receiving one of the harshest penalties imaginable, namely forfeiture of a business, deprivation of livelihood, and in the case of Millard Orick, hastened death at the hands of the United States. Administrative and judicial due process was entirely absent. This result occurs even after the District of Columbia Circuit promised that there would be judicial review in a district court.

Petitioners argue that intervention was proper. If 28 U.S.C. §1654 is applicable to the defendant, it is inapplicable to the intervenor. If applicable to the defendant, 28 U.S. C. §1654 was followed to the extent legally and ethically possible. Potential litigants may not be required perform illegal, unethical, and impossible acts in order to maintain the viability of their defense and cross complaints.

No authority in 28 U.S.C. §1654 may be found to retroactively disqualify persons ordinarily eligible to file pleadings under state law. To the extent that the Ninth Circuit is creating new law, it conflicts with both the United States Constitution, the Communications Act, and the laws and rules of the State of Arizona.

Even assuming High Country was a corporation within the purview of 28 U.S.C. §1654, the Rules of the Arizona Supreme Court permit it to plead through either a qualified fulltime law student or an attorney filing a limited appearance. There is no foundation in the law for a federally created concept of "permanent counsel" to supersede state rules of attorney practice and corporate conduct.

Petitioners argue that the Arizona Corporation Code prohibits a defunct corporation from conducting business or entering into contractual relationships. This prohibition encompasses the type of "permanent" attorney-client relationship apparently concocted by the U.S. Attorney as an alleged rule of law.

Assuming that the definition of a "permanent counsel" were defined, and a defunct corporation able to find a willing lawyer, the Arizona Corporation Code and Rules of Professional Conduct would make such a relationship impossible, impractical, and unethical. The Order of District

Court sought to mandate a contractual relationship between a client and an attorney outside of both Arizona law and its rules of Professional Conduct.

Finally, Petitioners note that the motivation of the United States was improper. The motive was not to provide a reasoned basis for its actions, but rather to require defendant to incur additional unnecessary expenses, prolong litigation, and preclude the underlying controversy ever being fairly heard in a due process venue.

CONCLUSION

Petitioners argue that the Courts below would have illegally required them to engage in impossible, illegal, and unethical acts. They were deprived thereby of their rights guaranteed under Communications Law, and the Fifth and Seventh Amendments and Eighth Amendments. The influential plaintiff further caused the courts below to invent a new rule of attorney practice which retroactively and impermissibly conflicts with state law.

Petitioners pray for a resolution between Communications Law as interpreted by the District of Columbia Circuit, which promises due process, and the actual practice in the Ninth Circuit which has precluded it.

REASONS FOR GRANTING WRIT

1. To resolve a conflicts between the circuits and to avoid an unintentional narrowing of Rule 24 F.R.C.P. The District of Columbia Circuit interpreted Communications Law to require a trial de-novo in this matter involving a civil forfeitures High Country Broadcasting Corporation v. FCC, CA 89-1182 (Ct. App. D.C. Cir., June 9, 1989) citing Pleasant Broadcasting v. FCC, 564 F.2d 469, 500-02 (Ct. App. D.C. Cir. 1977) and 47 U.S.C. §503(B)(3)(b), §504(a). This authority is most directly taken from Amendment Seven of the United States Constitution, and from the Communications Act of 1934, as amended.

In the past, the Ninth Circuit has also been required supported the Constitutional position that a taking of personal property also requires due process, even if the taking is of a definite duration First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 107 (1987). This authority most directly lies in Amendment Five of that Constitution.

A taking of personal property under a civil forfeiture statute without due process also violates the excessive fines clause of the Eighth Amendment.

In the present controversy, the Ninth Circuit sustained an unusual lower court default judgement which has the practical effect dispossessing private parties of property without any due process whatsoever. The Ninth Circuit has in this instance completely defeated the guarantees of a due process review promised in the previous District of Columbia ruling.

Intervention was proper under 28 U.S.C. Rule 24(a) F.R.C.P., because C.R. Crisler had an interest as the owner of the seized radio station that was separate and distinct from any interest he may have had in the defunct former corporate owner. His distinct and separate personal property was among that seized, and he also possessed all of the other qualifications for intervention Reich v. Webb, 336 F.2d 153 (9th Cir. 1964), cert. den. 85 S.Ct. 890, 380 U.S. 915.

Even if the intervenor had no separate personal interest, he is authorized intervention under Communications Law Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4 (1941) and under Ninth Circuit procedure where a default judgement was awarded precipitously Intel Corporation v. Hartford Accident & Indemnity Company, 952 F.2d 1551 (9th Cir. 1991).

Petitioners do not believe that Rule 24 F.R.C.P. may be narrowed in the manner suggested by the Courts below. A meritorious defense and cross-complaint was properly presented, through an attorney. Default judgement and denial of intervention under such circumstances is improper Securities & Exchange Commission v. Vogel, 49 F.R.D. 297 (D.C. N.Y. 1969); Hamilton v. Edell, 67 F.R.D. 118 (D.C. Pa. 1975); Mitchell v. Eaves, 24 F.R.D. 434 (D.C. Tenn, 1950); Davis v Carabo, 50 F.R.D. 468 (D.C. S.C. 1970); In Re: Men's Sportswear, Inc., 834 F.2d 1134 (2nd Cir. 1987); ILLGWU National Retirement Fund v. Empire State Mills Corp., 696 F.Supp 885 (S.D.N.Y. 1988); Mendoza v. Wright Vineyard Management, 783 F.2d 941 (9th Cir. 1986). An erroneous default may be set aside (28 U.S.C. F.R.C.P., Rules 55,60).

2. A potential litigant may not be required to violate the law or engage in unethical acts in order to have his day in court. In the District of Arizona, a corporation was sued in its name, long after the plaintiff was aware or should have been aware that the corporation had dissolved. Indeed, it was the plaintiff United States which introduced an affidavit stating that it had been dissolved.

The defendant corporation answered and cross-complained, through counsel, in the only manner it deemed to be possible, legal, and ethical. The government plaintiff objected to the answer and cross-complaint, first on the basis that a former corporation could not be defended by a fulltime law student, and later on the basis that the an attorney-client relationship must be "permanent."

The flimsy basis upon which District Court refused to accept Petitioners answers and cross-complaints, namely that "permanency of counsel" was inadequate, is challenged here as a concept which has neither been explained nor which has any foundation in law. The type of contractual attorney-client relationship that the United States Attorney apparently argues for would have been illegal, unethical, and impractical.

As this case has unfolded, it appears that the government plaintiff planned its litigation either explicitly to complicate and increase the costs of litigation to the defendants, and/or to thwart the due process requirements of Communications Law. Neither such option is permissible under 28 U.S.C. Fed. Rules Civ. P., Rule 11, nor was the conduct of the United States Attorney

appropriate under the standards enunciated by the Supreme Court Harry Berger v. United States, 295 U.S. 78, at 88 (1935) and practiced in federal courts Barrett v. United States, 798 F.2d 565 (2nd Cir. 1986); United States v. Shaffer Equipment Co., No. 5:90-1195, Lexis 13711 (Va. 1992).

Neither the United States Attorney nor the District Court explained how "permanency of attorney, " a concept which first appeared in their appellate brief, could properly have been achieved in the court below.

To have reconstituted a defunct corporation whose incorporator was dead, whose incorporator's heirs were unknown and/or uncooperative, and which corporation had no assets or legal ability to enter into the relationships apparently being demanded by government attorneys, would have constituted an impossibility.

Any number of provisions of the Arizona Corporation Code, and the Arizona Code of Professional Conduct also argue against an attorney entering into the type of attorney-client relationship proposed by the District Court. Under A.R.S. §10-146, any post-dissolution conduct of business by High Country would have been deemed fraudulent in the eyes of the State of Arizona. High Country cannot obtain the written power of resurrection required under A.R.S. §10-145 to conduct general business under A.R.S. §10-105 because its incorporator and principal stockholder is deceased.

Under the Rules of Professional Responsibility, E.R. 1.4, a licensed attorney many not represent a corporation unless he can communicate with his client. She may not, under E.R. 1.7, represent

someone who is hostile or whose consent she cannot obtain. Compensation cannot apparently be accepted by an attorney from a corporate client, from any other than the corporate treasury under E.R 1.8. As noted herein, High Country has no such corporate status or treasury. An attorney faced with these ethical constraints is thus enabled to refuse to represent a client under E.R. 1.16(5).

An Article III Court may not require, as a condition or prerequisite for litigation, that the litigants enter into illegal, prohibited, and/or unethical conduct. Petitioners further argue that the chameleon-like concept of "permanency of counsel" argued below by the government has no foundation in law, and to have endeavored any more fully to employ that concept would have been both illegal, unethical, and impractical.

3. To interpret and apply the concepts of Constitutionally-guaranteed due process to deprivation of property by the United States of America under its various civil forfeiture statutes. Petitioners complain here that due process was lacking, violating the Constitution. No explanation has been forthcoming as to what specifically the defendant did that was wrong, or upon what specific evidence the government's complaint, its actions, and its inactions, were founded Hodges v. Eastern, 106 U.S. 408 (1982); Algeria I, Inc. v. FCC, 905 F.2d 471 (D.C. Cir. 1990); High Country and Pleasant, supra. Under the Communications Act, the Administrative Procedure Act, and the Fifth, Seventh, and Eighth Amendments, a taking of property without a civil jury trial is prohibited.

In 1986, the intervenor was constructively deprived of his personal property as the result of acts and inactions of the United States. There was no pre-deprivation or post-deprivation due process afforded. The successors of a defunct corporation have further been injured as a result of a civil forfeiture action begun first in an administrative forum, and subsequently transferred to the judiciary without the appropriate safeguards. No opportunity has been afforded to impeach or cross-examine City of Rohnert Park v. Harris 601 F.2d 1040 (9th Cir. 1979); Chipanno v. Champion International Corporation, 702 F.2d 829 (9th Cir, 1983); Belz Travel Service, Inc. v. International Air Transport Assoc., 620 F.2d 1360 (9th Cir. 1980); Walker Distributing v. Lucky Lager Brewing Co., 232 F.2d 1 (9th Cir. 1963).

There have been violations of the Fifth and Seventh Amendments to the Constitution of the United States, and quite possibly of the excessive fines clause of the Eighth Amendment. At no point has there been a proper investigation, any hearing, or a trial, or discovery. The actions and inactions of the United States are in violation of the Constitution, offensive to administrative and communications law, have evaded review, and If left unchecked, are capable of repetition.

CONCLUSIONS

AS TO THE DEFENDANT-PETITIONER

In 1992 a default judgement under a civil forfeiture statutes was ordered against a corporation which had been defunct for more than three years, and had no legal, ethical, or practical ability to comply with standards of attorney practice which were ambiguously applied to it. The federal standard retroactively applied was incomprehensible, and conflicted with state law and practice. The default was without the due process promised by the Fifth, Seventh, and Eighth Amendments, and guaranteed under Communications Law.

This Court should grant the defendant's Petition for Certiorari, summarily vacate the default judgement against it, and remand the underlying issues of fact and law for trial in a lower court of competent jurisdiction. In order to do so, it must determine the applicability of 28 U.S.C. §1654, and if it is found to be applicable, define its relationship state laws regarding attorney practice and corporations.

AS TO THE INTERVENOR-PETITIONER

In 1986, the personal property of the Petitioner-Intervenor was constructively seized under a civil forfeiture statute, but without the due process guaranteed under Fifth, Seventh, and Eighth Amendments to Constitution of the United States. The specific guarantees of the Administrative Procedure Act and Communications Law were not enforced. Clear and prejudicial errors of fact, and violations of the Federal Rules of Evidence also occurred in the processes below which contributed to the absence of due process.

This Court should further grant the intervenor's Petition for Certiorari, authorize his intervention, and remand his Petition and cross-complaint for trial in a lower court of competent jurisdiction.

In doing so, it must resolve questions as between the separate legal interests of a corporation and one who purchases its assets, and set standards of intervention in a Communications Law case where there is a conflict as between the various Circuits.

AS TO BOTH PETITIONERS

Petitioners further pray that this Court shall grant their Petition for Certiorari in order to grant them justice, and that the Court may elaborate further upon the standards of conduct required of government prosecutors.

Petitioners note that in addition to the federal question conflicts as between the Ninth Circuit and the District of Columbia Circuit, the practical outcome of the matter below has far departed from the accepted and usual course of judicial proceedings in several ways. The matter calls for an exercise of this Court's power of supervision.

Respectfully submitted,

C.R. Crisler
Post Office Box 292796
Nashville, Tennessee 37229-2796

Attorney at Law
Supreme Court Bar Admission Pending

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Cross-Defendant-Appellee,* v. HIGH COUNTRY BROADCASTING COMPANY, INC., *Defendant-Cross-Claimant-Appellant,* and C.R. CRISLER, *Applicant in Intervention-Appellant.*	No. 92-15581 D.C. No. CV-90-00706-PGR OPINION

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted August 13, 1993*
San Francisco, California

Filed August 27, 1993

Before: Alex Kozinski, David R. Thompson and
Thomas G. Nelson, Circuit Judges.

Per Curiam

SUMMARY

Attorneys and Judges/Judicial Administration/Civil Litigation and Procedure

The court of appeals affirmed a judgment of the district court. The court held that the intervention of a corporate defendant's sole shareholder was properly denied when the circumstances made clear that his interests were identical to those of the defendant and the purpose of the intervention was to represent the defendant pro se.

A licensed attorney made a limited appearance to file the answer and cross-complaint of appellant High Country Broadcasting Company, Inc. C.R. Crisler, High Country's president, statutory agent, and sole shareholder, represented High Country thereafter, although he was not a licensed attorney. The district court ordered High Country to retain counsel for the duration of the litigation. Instead, Crisler moved to intervene, which the court denied, entering a default judgment against High Country for its failure to retain counsel. High Country and Crisler appealed.

[1] Under 28 U.S.C. Section 1654, High Country, as a corporation, could appear only through licensed counsel. The default judgment was therefore proper.

[2] Crisler was responsible for High Country's failure to retain counsel. His objective as intervenor was to represent High Country pro se. His interests were identical to High Country's. To allow him to intervene under such circumstances would eviscerate Section 1654's requirement of corporate counsel. The rule on intervention did not condone such a result.

COUNSEL

United States Attorney, Phoenix, Arizona, for the plaintiff-appellee United States of America.

C.R. Crisler, Memphis, Tennessee, pro se and for the defendant-appellant High Country Broadcasting Company, Inc.

OPINION

PER CURIAM:

[1] A corporation may appear in federal court only through licensed counsel. *Rowland* v. *California Men's Colony*, 113 S. Ct. 716, 721 (1993); *see also* 28 U.S.C. § 1654. An attorney appeared for High Country in the district court for the limited purpose of filing an answer and cross-complaint. *See* CR 3. When it became apparent that Crisler (who was not a licensed attorney at that time) was attempting to represent High Country, the district court ordered High Country to retain counsel for the duration of the litigation. When High Country failed to do so, the district court entered a default judgment against it; this was perfectly appropriate. *See, e.g., Shearson Loeb Rhoades, Inc.* v. *Quinard*, 751 F.2d 1102 (9th Cir. 1985).[1]

A more interesting issue is raised by the district court's refusal to let Crisler intervene under Federal Rule of Civil Procedure 24. Intervention as a matter of right is proper if (1) the motion is timely; (2) the applicant asserts an interest relating to the subject of the action; (3) without intervention, the disposition of the action may impair the applicant's ability to protect that interest; and (4) the applicant's interests are inadequately represented by the other parties. *California* ex rel.

Van de Kamp v. *Tahoe Regional Planning Agency*, 792 F.2d 779 (9th Cir. 1986).

Crisler was High Country's President and sole shareholder. His interests would have been adequately represented by High Country had it complied with the court's order to retain permanent counsel. But High Country didn't, resulting in a default judgment. This calls into question the adequacy of High Country's representation of Crisler's interests.

[2] In an ordinary case we might have our doubts whether High Country could adequately represent Crisler's interests. But here Crisler's application to intervene pro se was nothing more than an end run around section 1654. As High Country's President, statutory agent and only shareholder, Crisler was singularly to blame for High Country's failure to retain counsel. As an intervenor, Crisler sought to accomplish the exact same objectives that he did as High Country's counsel — to represent High Country pro se. To allow a sole shareholder with interests identical to the corporation's to intervene under such circumstances, rather than hire corporate counsel, would eviscerate section 1654. We decline to read Rule 24 as condoning such a result. *See* Fed. R. Civ. P. 1 (court shall interpret rules to "secure the just, speedy, and inexpensive determination of every action"); *Marquis Theatre Corp.* v. *Condado Mini Cinema*, 846 F.2d 86, 89 (1st Cir. 1988) (Rule 1 prevents party from flouting spirit of rules, even if party fits within their literal meaning). The district court did not err in denying Crisler's motion to intervene.

Finally, Crisler maintains High Country is "nonexistent" and cannot be sued. But the United States' claim survives the corporation's dissolution. *See* Ariz. Rev. Stat. Ann. § 10-105;

see also Ruck Corp. v. *Woudenberg*, 611 P.2d 106, 110 (Ariz. Ct. App. 1980).

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ. 90-706-PHX-PGR
Filed February 14, 1992

ORDER

Having reviewed the record herein, the Court concludes that only a few of the various pending motions warrant any discussion. Among those is C.R. Crisler's motion to intervene in thisction pursuant to Fed.R.Civ.P. 24. The Court finds that the motion should be denied because intervention is not appropriate under either Rule 24(a) or Rule 24(b) inasmuch as Crisler has not established that he has a sufficient interest of his own that would be impaired or impeded by the disposition of this matter. The claims and defenses that Crisler wishes to litigate are either those that are, or could be, adequately represented by High Country Broadcasting in this action, or are included in the action Crisler filed in the Western District of Tennessee in Civil No. 90-2497.

The Court further finds that the cross-defendant's motion to dismiss the cross-complaint filed by High Country Broadcasting should be granted pursuant to Local Rule 11(i) due to High Country Broadcasting's failure to serve and file the required answering memorandum, as well as on the merits for the reasons set forth in the motion.

The Court also finds that Crisler's motion to dismiss High Country Broadcasting from this action should be denied because the United States' claim against the corporation survived its dissolution pursuant to A.R.S. §10-105 and because Crisler, a non-attorney, many not represent High Country Broadcasting.

The Court further finds that the United States' motion for entry of default judgement should be granted. Default was entered against High Country Broadcasting on July 15, 1991 as a result of its failure to file an answer through counsel by the January 23, 1991 deadline established by the Court at the hearing held on November 26, 1990. As the Court noted at that hearing, the answer filed on High Country Broadcasting's behalf by attorney Alicia Tocco on 19, 1990 was improper because it was clear fromuly Tocco's notice of limited appearance that High Country Broadcasting was not then actually being represented by counsel as is required. The Court also finds from the record before it that it has personal jurisdiction over High Country Broadcasting by virtue of process being served on Crisler, who High Country Broadcasting listed in its last annual report as its statutory agent. See Neis v. Heinson/Phoenix, Inc., 628 P.2d 979 (Ariz. Appl 1981).

Therefore,

It is Ordered that C.R. Crisler's Motion to Intervene (Doc. #2) is denied.

It is Further Ordered that the cross-defendant's Motion to Dismiss Cross Claim (Doc. #6) is granted and that the cross-complaint is dismissed. The Clerk of the Court shall enter judgement accordingly.

It is Further Ordered that the Motion of Cross-Plaintiff for Rule 11 Sanctions (Doc. #13) is denied.

It is Further Ordered that the Motion of Cross-Plaintiff for Reconsideration of

October 17, 1990 Order of Substitution (Doc. #15) is denied.

It is Further Ordered that C.R. Crisler's Motion to Dismiss Defendant (Doc. #19) is denied.

It is Further Ordered that C.R. Crisler's Alternative Motion to Transfer (Doc. #20) is denied.

It is Further Ordered that the United States' Motion to Strike Motion for Rule 11 Sanctions (Doc. #16), Motion to Strike (Doc. #17), Motion to Strike Opposition of Cross-Plaintiff to Motion to Substitute (Doc. #18), Motion to Strike Motion to Dismiss Defendant (Doc. #21), Motion to Strike Alternative Motion to Transfer (Doc. #22), Motion for Enlargement of Time in Which to Brief Transferability Issues (Doc. #23), and Motion to Strike Intervenor's Opposition to Motion for Default Judgement (Doc. #32) are all denied as moot.

It is Further Ordered that C.R. Crisler's Petition for Leave to File in Opposition to a Motion for Default Judgement and for Leave to File a Rule 11 Motion (Doc. #33) is denied.

It is Further Ordered that the United States' Motion for Entry of Judgement by Default (Doc. #30) is granted and that the Clerk of the Court shall enter default judgement in favor of the United States and against High Country Broadcasting Company, Inc. in the amount of $5,000.00 with interest at the legal rate accruing from the date of judgement.

Dated this 13th day of February, 1992

SS
Paul G. Rosenblatt
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
NO. 89-1182
SEPTEMBER TERM 1988

Filed June 9, 1989

Before: Mikva, Edwards, and Williams, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opposition thereto, the reply and the motion to defer filing of certified index, it is

Ordered that the motion to dismiss be granted. Because the agency imposed the forfeiture according to the abbreviated proceeding described in 47 U.S.C. §503(b)(4), any suit involving recovery of the forfeiture is subject to trial de-novo in the district court. See 47 U.S.C. §§503(b)(3)(b), 504(a). Such actions are brought by the United States Attorneys to prosecute for recovery of forfeitures. However, if the government delays in bringing the collection action in district court, presumably appellant could bring a declaratory judgement action against the United States in district court. In this proceeding, "all the issues of fact and law presented by the licensee would be subject to the trial de-novo procedure set forth in section 504(a)." Pleasant Broadcasting Company v. FCC, 564 F.2d 496, 500-02 (D.C. Cir. 1977). Although this action should be litigated in the first instance, we decline to sua sponte transfer this case under 28 U.S.C. §1631, as a transfer does not appear to be in the interests of justice. We take this opportunity, however, to remind the parties to address the question whether transferring a case under section 1631 is

appropriate when moving to dismiss on the ground that the case has been filed in the wrong court. It is Further Ordered that the motion to defer filing of certified index be dismissed as moot.

The Clerk is directed to withhold the issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam